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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

CONNIE CARDINALE, an individual,

Plaintiff,

v.

XAVIER BECERRA, an individual sued in his official capacity only; SCOTT R. JONES, an individual sued in his official and individual capacities; COUNTY OF SACRAMENTO, a governmental entity; SACRAMENTO COUNTY SHERIFF'S DEPARTMENT, a public entity; CLINTON ROBINSON (#305), an individual sued in his official and individual capacities; and Does 1 through 20, all sued in their individual capacities;

Defendants.

Case No.: 2:20-CV-1325 MCE CKD

**DEFENDANT'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION TO DISMISS**

Date: August 20, 2020
Time: 2:00 p.m.
Courtroom: 7
Judge: Honorable Morrison C. England, Jr.
Trial Date: N/A
(Under submission)

Action Filed: July 1, 2020

INTRODUCTION

Defendant California Attorney General Xavier Becerra's Motion to Dismiss should be granted for the following reasons: AG Becerra is subject to sovereign immunity pursuant to the Eleventh Amendment, and plaintiff has failed to allege any basis for the application of the exception to this immunity provided by *Ex parte Young*, 209 U.S. 123 (1908). Moreover,

1 Plaintiff failed to state a claim under 42 U.S.C. § 1983 by alleging an actual connection between
 2 the actions of the named AG Becerra and the alleged constitutional violations.

3 ARGUMENT

4 I. PLAINTIFF'S CLAIMS AGAINST ATTORNEY GENERAL BECERRA ARE BARRED BY 5 THE ELEVENTH AMENDMENT

6 Plaintiff's Opposition cites three cases in arguing that the exception to Eleventh Immunity
 7 provided by *Ex parte Young* should apply. The first is *Idaho v. Coeur d'Alene Tribe of Idaho*,
 8 521 U.S. 261 (1997), in which the court determined that the exception was *inapplicable*. The
 9 citation in Plaintiff's Opposition merely refers to the concurring opinion of three justices in which
 10 they recite the standard in *Ex parte Young*, which both parties in this case agree is the controlling
 11 authority on this issue.

12 The second case cited as a basis for the application of the exception is *Milliken v. Bradley*,
 13 433 U.S. 267, 273 (1997). That case involved a decision from the district court that laid out a
 14 remedial desegregation plan consisting of four educational components, with the cost of
 15 implementing these programs to be borne by the state. In *Milliken*, the court relied upon the
 16 prospective-compliance exception from *Edelman v. Jordan*, 415 U.S. 651 (1974), which had its
 17 genesis in *Ex parte Young*, but is a distinct exception involving federal courts' power ensure a
 18 state's compliance with federal law "notwithstanding a direct and substantial impact on the state
 19 treasury." *Milliken, supra*, 433 U.S. at 289. That is far different than the issue in the current case.

20 The third case cited as a basis for the application of the exception is *Clark v. Cohen*, 794
 21 F.2d 79 (3d Cir. 1986). That Third Circuit case is analogous to *Milliken*, and cites the same
 22 provisions of *Edelman* as the *Milliken* case. It involves a district court order requiring the
 23 expenditure of funds as part of an equitable relief order, which the court deemed appropriate
 24 under the prospective-compliance exception.

25 As argued in the Motion to Dismiss, the Eleventh Amendment's jurisdictional bar applies
 26 regardless of the nature of the relief sought, including declaratory and injunctive relief.

27 *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984); *see also S. Pac. Transp.*
 28 *Co. v. City of L.A.*, 922 F.2d 498, 508 (9th Cir. 1990) (affirming dismissal of declaratory and

1 injunctive relief claims). Here, AG Becerra, as an officer of the State of California, has neither
2 consented to nor waived his sovereign immunity regarding the legal theories asserted in the
3 Complaint.

4 Additionally, the *Ex parte Young* exception only applies if the state officer had a connection
5 with the enforcement of the allegedly unconstitutional statute. *Long v. Van de Kamp*, 961 F.2d
6 151, 152 (9th Cir. 1992). “This connection must be fairly direct; a generalized duty to enforce
7 state law or general supervisory power over the persons responsible for enforcing the challenged
8 provision will not subject an official to suit.” *L.A. Cty. Bar Ass’n v. Eu*, 979 F.2d 697, 704 (9th
9 Cir. 1992) (citing *Long*, 961 F.2d at 152). In this case, the allegations in the Complaint are
10 directed at AG Becerra in his official capacity, and only allege involvement by AG Becerra as the
11 “policy maker” for his agency, thereby having “the authority to order or direct that the firearms be
12 returned to Plaintiff.” (ECF No. 1, p. 9, ll. 9-10.) This is exactly the type of broad, generalized
13 allegation that was rebuffed in *Eu*.

14 Plaintiff’s Opposition argues that “the Complaint alleges that the Bureau of Firearms – a
15 bureau within Becerra’s Department of Justice – has wrongly rejected Ms. Cardinale’s
16 applications to reclaim her firearms...” (ECF No. 19, p. 13, ll. 24-26.) Plaintiff did not bring this
17 action against the Bureau of Firearms or the Department of Justice because such an action would
18 clearly be barred by the Eleventh Amendment. The exception provided by *Ex parte Young* was
19 not intended to effectively eradicate the Eleventh Amendment by allowing plaintiffs to seek relief
20 against the head of the state agency with which they have a problem. The exception was intended
21 to provide relief when the individual state actors have a direct connection to the violation. There
22 is no indication that AG Becerra had a direct connection to the denial of Plaintiff’s application,
23 nor is there an allegation of any such direct connection in the Complaint.

24 The Eleventh Amendment bars this lawsuit from proceeding against AG Becerra, and the
25 limited exception provided by *Ex parte Young* does not apply due to the clear, unequivocal
26 allegations in the Complaint involving AG Becerra’s limited, supervisory involvement in the
27 underlying allegations. For these reasons, this Motion to Dismiss should be granted.

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1 **II. PLAINTIFF FAILS TO ALLEGE SUFFICIENT FACTS TO STATE A CLAIM AGAINST**
2 **ATTORNEY GENERAL BECERRA**

3 As argued in the Motion to Dismiss, to state a claim under 42 U.S.C. § 1983, a plaintiff
4 must allege an actual connection between the actions of the named defendants and the alleged
5 deprivations. *Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978). “A person ‘subjects’ another
6 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative
7 act, participates in another’s affirmative acts, or omits to perform an act which he is legally
8 required to do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588
9 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of
10 official personnel in civil rights violations are not sufficient. *Ivey v. Board of Regents*, 673 F.2d
11 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth specific facts as to each individual
12 defendant’s causal role in the alleged constitutional deprivation. *Leer v. Murphy*, 844 F.2d 628,
13 634 (9th Cir. 1988).

14 Here, there are no specific allegations against Attorney General Becerra. Plaintiff’s
15 Opposition recites several paragraphs of the Complaint, none of which establish specific
16 allegations directly against AG Becerra for a constitutional deprivation. To the extent Plaintiff
17 relies on *Coalition to Defend Affirmative Action v. Brown*, 674 F.3d 1128 (9th Cir. 2012), that
18 case involved a constitutional challenge to a state law, namely California Constitution, Article I,
19 Section 31. The underlying premise of the *Brown* holding relies upon *Ex parte Young*,
20 specifically citing that, “[t]he individual state official sued ‘must have some connection with the
21 enforcement of the act.’” *Ex parte Young, supra*, 209 U.S. at 157. Although this case does not
22 involve a challenge to the constitutionality of the underlying statutory framework at issue in
23 returning firearms after a seizure by law enforcement, the premise of *Brown* is consistent with
24 AG Becerra’s arguments in this case. In her Opposition, Plaintiff cites California Penal Code
25 sections 33850, 33855, and 33865 as the statutes which “specifically implicate Becerra and his
26 Bureau of Firearms in this case.” (ECF No. 19, p. 12, ll. 1-3.) While none of those statutes appear
27 on the face of the Complaint, they establish that AG Becerra must enforce the statutory
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1 framework that permits the denial of Plaintiff's application for the return of her firearms. Unlike
 2 Yudof, the President of the Regents of the University of California in the *Brown* case, AG
 3 Becerra is enforcing the Penal Code sections that govern the return of firearms to an individual
 4 following their seizure by law enforcement. In her recitation of applicable statute statutes that
 5 must be enforced by AG Becerra, Plaintiff omits reference to Cal. Code Regs. tit. 11, § 4045.1,
 6 which provides, in part:

7 “(c) For all eligibility checks, if the applicant's name as it appears on the federal non-
 8 compliant California driver license or identification card differs from the name on the
 9 proof of lawful presence document submitted in accordance with subdivision (b), the
 10 applicant shall also submit, as specified in subdivisions (d) through (g), one of the
 11 following certified documents:...

12 ...(3) A marriage certificate....”

13 Plaintiff's Opposition reinforces the grounds for dismissing this case for failure to state facts
 14 sufficient to constitute a cause of action against AG Becerra. The entire foundation for Plaintiff's
 15 suit is the postponement of approving Plaintiff's application for the return of her firearms until
 16 she submits a marriage certificate establishing her lawful identity. Although Plaintiff failed to set
 17 forth specific facts as to AG Becerra's causal role in the alleged constitutional deprivation, even
 18 considering the statutory regulations cited in the Opposition clearly establishes that AG Becerra is
 19 not a proper defendant. Plaintiff has not alleged enough facts to state a claim for relief against
 20 Attorney General Becerra.

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CONCLUSION

For the reasons stated above, AG Becerra respectfully requests that this Court grant the motion to dismiss. Because the defects in the Complaint cannot be cured by amendment, the motion should be granted without leave to amend.

Dated: August 10, 2020

Respectfully submitted,

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CATHERINE WOODBRIDGE
Supervising Deputy Attorney General

/s/ John C. Bridges
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Deputy Attorney General
Attorneys for Defendant Xavier Becerra

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CERTIFICATE OF SERVICE

Case Name: **Connie Cardinale v. Xavier
Becerra, et al.**

No. **2:20-CV-1325 MCE CKD**

I hereby certify that on August 10, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 10, 2020, at Sacramento, California.

Tamara Yeh
Declarant


Signature

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